

35,812

1 Friday, 19 December 1947
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5 INTERNATIONAL MILITARY TRIBUNAL
6 FOR THE FAR EAST
7 Court House of the Tribunal
8 War Ministry Building
9 Tokyo, Japan
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The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE E. STUART McDougall,
Member from the Dominion of Canada, not sitting from 0930
to 1600; HONORABLE JUSTICE JU-AO MEI, Member from the
Republic of China, not sitting from 1330 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTIE.)

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TOGO

CROSS

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Brannon.

4 BY MR. BRANNON (Continued):

5 Q There has been considerable testimony relative
6 to the fact that the Naval General Staff wanted to
7 attack the United States without any notice at all.

8 Did Admiral SHIMADA, as Navy Minister at that time,
9 ever tell you that he wanted to attack the United
10 States without complying with international law?

11 A My recollection is that at the time discussion
12 was held on this matter, SHIMADA sat in silence and
13 did not utter a single word.

14 Q Now, Vice-Admiral ITO, Vice-Chief of the Naval
15 General Staff then, is the man whom you state insisted
16 on an attack without notice; is that correct?

17 A It is my recollection that it was NAGANO who
18 first mentioned the matter of a surprise attack; and
19 then, after that, ITO requested that the negotiations
20 be left unterminated.

21 Q And did this conversation take place at a
22 liaison conference?

23 A Of course, yes.

24 Q Mr. TOGO, Admiral SHIMADA testified before this

1 The question, Mr. President, comes with ques-
2 tional grace at this time, since the accused TOGO's
3 counsel went forward with all of his documents -- all
4 of them had been served -- and into the phases as though
5 no reservation at all had been made. And, furthermore,
6 as I stated, in my own mind there was some question
7 raised by the Court as to whether or not that would be
8 proper procedure, and it was my understanding that my
9 offer to so limit, which of course would need consent
10 or agreement from the opponent, was rejected, and I
11 went forward under that understanding.

12 THE PRESIDENT: I didn't understand Major
13 Blakeney to accept your suggestion when you made it
14 some days ago nor to try to pin you down today, but what
15 he did appear to want to know was whether you propose
16 now to indulge in unrestricted cross-examination, so
17 that he might shape his course or reshape it. If I am
18 under misapprehension, he may correct me.
19

20 You are not bound by any intimation you give
21 unless you are under an obligation to the Court or the
22 counsel for the opposing side, and I didn't understand
23 you to be under any obligation to either. We will not
24 put you on terms in such a matter and Major Blakeney
25 didn't, as far as I recollect.

MR. KEENAN: I might state briefly, not to

have been broached because he came back to Germany,
but I have no recollection of any conversation on
that.

Q Reference is made to exhibit 571, page 6,465
of the transcript. In your discussions with Ambassador Ott did you not approve a plan drafted by the German Foreign Ministry which in part provided for the building of a demonstration hall in Tokyo?

A I have no recollection. However, I should like to state that because there was a project under discussion with reference to the erection of a Japan-German Association building in Japan, and the subject may have been brought up in connection with that subject. But I have no recollection of hearing anything about what you call a demonstration hall.

Q Was not the purpose of intensification of propaganda to improve the minds of the Japanese people for cooperation with Germany?

A It was to foster good will between Germany and Japan.

Q Did you have a conversation with Ribbentrop shortly prior to 4 January 1942 regarding the question of cooperation between the Axis Powers and Japan in the field of propaganda directed especially toward India and the Arabian countries?

NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

1 the Emperor to await the advice of those close to him
2 or those who were his official advisers. But at that
3 time, because the question was one requiring most
4 urgent action and there was no time to await any
5 unanimity of opinions within the government, or to
6 await the formation of a new cabinet, rather than do
7 that, I think, his majesty the Emperor gave his
8 heroic decision at that time.

9 THE PRESIDENT: Major Blakeney.

10 REDIRECT EXAMINATION

11 BY MR. BLAKENEY (Continued):

12 Q I want to ask you about one or two matters
13 which were brought up but not fully covered during
14 your cross-examination. First, on the 22nd of
15 December at page 35,967 of the record, you were asked
16 about certain documents relating to the period of the
17 Chinese Eastern Railway negotiations. Since one of
18 the documents of this type happens to be in evidence,
19 I will ask that it be handed to you, exhibit No. 748.
20

21 (Whereupon, a document was handed
22 to the witness.)

23 Please glance at that and state to the Tri-
24 bunal to whom it is addressed.

25 A It says "To Mr. Si-Lui-Ben, Special Agent of
the Ministry of Foreign Affairs in North Manchuria."

TOGO

REDIRECT

36,139

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seat in the dock.)

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MR. BLEWETT: That is the end of the individual case of TOJO.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I now present the defense of General UMEZU, Yoshijiro. Neither the evidence introduced by the prosecution relating to this defendant nor the evidence which the defendant is in consequence called upon to adduce in his own behalf justifies any elaborate opening of the case. I shall therefore proceed directly with the evidence.

I now offer, first, defense document No. 2954, the affidavit of AYABE, Kentaro; whose production for cross-examination I understand not to be desired.

THE PRESIDENT: Colonel Ivanov.

COLONEL IVANOV: Your Honor, the prosecution objects to paragraph 3 of the affidavit of AYABE, Kentaro inasmuch as at the beginning of this paragraph the witness submits his own personal conclusion based on hearsay. As to the allusion to UMEZU's speech in 1937 at the 17th Session of the Diet at the end of this paragraph we submit that it is secondary evidence. The Tribunal has always preferred, for quite fair reasons, to get the best evidence which, in this case, would be to present

1 Tribunal will take judicial notice of it as I sub-
2 mitted the other day. If not, we will have to rest
3 with that reservation.

4 THE PRESIDENT: If the Tribunal decides not
5 to act on the agreement, I have no doubt they will
6 give you liberty to proceed to prove the law of Japan
7 in the usual way, but I do not anticipate any dis-
8 agreement. By "in the usual way" I mean in the manner
9 that a question of fact would be proved in any
10 national court.

11 MR. LOGAN: We will accept that, your Honor.

12 THE PRESIDENT: Captain Brooks.

13 MR. BROOKS: If the Tribunal please, I was
14 at this meeting, and I did agree as to the method set
15 out in this agreement, reserving my right to comment
16 on the premises as set forth by the prosecution. Some
17 of them I disagree with. There may be others that
18 have agreed with the method set forth for handling
19 these matters in order to save time for this Tribunal,
20 but I want the Tribunal to understand that that is my
21 position.

22 THE PRESIDENT: Mr. Levin

23 MR. LEVIN: Mr. President, I was not at
24 this meeting this noon; and, as I understood it, there
25 was to be a discussion in relation to whether or not

THE PRESIDENT: Mr. Yamaoka.

1 MR. YAMAOKA: May it please the Tribunal, I
2 wish to object to this document. In the first place,
3 the witness HORINCUCHI when he was questioned on this
4 document could not state definitely whether this telegram
5 was an official telegram of the Foreign Office. I have
6 looked at the original, together with my co-counsel,
7 and it is on paper which belongs to the Foreign Office,
8 but there are no signatures showing that it is the ori-
9 ginal or a copy of the original telegram actually sent.

10 Moreover, it just states that it was drafted
11 February 8, 1938. There is no statement nor any
12 insignia or mark showing that it was actually sent.
13 As your Honors will recall, during the testimony of many
14 of the defense witnesses, the Foreign Office practice
15 as to telegrams and official documents has been amply
16 explained. It is therefore possible that this may have
17 been a draft submitted by a minor bureau official in
18 the Foreign Office and merely remained in a draft form.

19 THE PRESIDENT: It is described as a telegram
20 in the certificate, and it has been coded and has a
21 number.

22 MR. YAMAOKA: There are many such documents, if
23 your Honors please, in the Foreign Of.ice, and if docu-
24 ments of this nature are accepted without further proof

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his failure to recollect the matter contained therein
1 or his refusal to state that the document as tendered
2 to him is the original or not the original does not
3 qualify such evidence as rebuttal evidence. If such
4 were the rule a witness could be asked on cross-
5 examination a very wide range of questions on subjects
6 dealing perhaps with the main part of his testimony,
7 or even as to his credibility, and if documents are
8 simply admitted in rebuttal just on that ground, I re-
9 spectfully submit it would prolong the rebuttal to such
10 an extent and expand its scope to such an extent that
11 it would be almost unbearable. In addition I respect-
12 fully submit that this document probably was in the
13 possession of the prosecution long before it closed
14 its case and, in the absence of some showing excusing
15 their tender during its case, as was done in the case
16 of the defense when matters relating to general sub-
17 jects and properly dealt with in the general phases
18 were refused admission until proper excuses or proper
19 reasons could be shown - I respectfully submit that
20 these standards have not been met and the document
21 should be rejected.

22 THE PRESIDENT: Mr. Comyns Carr.
23

24 MR. COMYNS CARR: If your Honor pleases,
25 the answers to those objections are exactly the same

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1 were resumed as follows:)

2 MARSHAL OF THE COURT: The International
3 Military Tribunal for the Far East is now resumed.

4 THE PRESIDENT: Mr. Yamaoka.

5 MR. YAMAOKA: May it please the Tribunal,
6 I do not propose to argue any further objections.
7 However, I do desire to correct the statement which
8 my learned friend made, which I believe was to
9 the effect that the accused HIROTA admitted nothing
10 and denied nothing. I believe the Tribunal is well
11 aware that he has pleaded not guilty to the Indictment.

12 Moreover, I wish to state that any allusion
13 by my learned friend to the failure of the accused
14 HIROTA to take the stand is not only improper according
15 to the practice to which I am accustomed, but I respect-
16 fully submit violates the statements made in respect
17 thereto by the learned Chief of Counsel.

18 THE PRESIDENT: Mr. Comyns Carr.

19 MR. COMYNS CARR: Your Honor, my learned
20 friend himself informed the Tribunal that HIROTA had
21 not denied making this particular statement and it was
22 necessary for me to meet that observation, which was
23 put as a ground of objection to the document being
24 received, pointing out that he had not denied anything.

25 THE PRESIDENT: The objection is overruled

1 THE PRESIDENT: Captain Brooks.

2 MR. BROOKS: On behalf of the accused KOISO
3 I wish to object to this document as having no proba-
4 tive value and being unimportant. I wish to object
5 further that it is not the best evidence, as it is not
6 a translation from the original before it was altered.
7 This is apparent from a previous exhibit, 3751-A,
8 on the back page thereof.

9 Paragraph 1 of the prosecution's own exhibit
10 reads that the manuscript was taken of notes to SAIONJI.
11 He read the material personally, corrected mistakes,
12 and added whatever additional notes he deemed necessary
13 to the manuscript. "He returns it to me the next time
14 I go to see him. Then a clean copy of this is made.
15 This is then edited again and filed away."

16 THE PRESIDENT: We have already decided that.
17 Why bring it up again?

18 MR. BROOKS: This latter clean copy with the
19 edited notes is what the Tribunal has before it, which
20 is third-hand, and I say is not the best evidence.
21 The prosecution has not made an attempt to bring in
22 the original unaltered notes of HARADA, who had personal
23 knowledge in some instances. That is why I had
24 suggested to the prosecution that they steer away
25 from this evidence for the time being, since they

1 and I have no opportunity to check them until after
2 it is too late, but I ask that the Court take the
3 page number given by the prosecution and study it
4 carefully and ascertain for themselves whether it
5 bears out his statement. I object to this as having
6 no probative value and not being important and as
7 being hearsay of the rankest form.

8 Furthermore, if these two, MINAMI and KOISO,
9 as mentioned in there, were criticizing each other,
10 it would certainly go to meet the prosecution's
11 allegations as to conspiracy. In fact, it may be
12 beneficial, assuming, of course, that this docu-
13 ment would have probative value.

14 THE PRESIDENT: By a majority, the objections
15 are overruled and the document admitted on the usual
16 terms.

17 CLERK OF THE COURT: Prosecution document
18 3150-10 will receive exhibit No. 3756 for identifica-
19 tion only; and the excerpt therefrom, being prose-
20 cution document 3150-10A, will receive exhibit No.
21 3756-A.

22 (Whereupon, document 3150-10 was
23 marked prosecution exhibit No. 3756 for
24 identification; and the excerpt therefrom,
25 document 3150-10A, was marked prosecution

1 MR. BROOKS: I submit that, if there was a
2 written petition, it should be produced or some-
3 thing in the nature of an official character that
4 shows there was such a petition before it is accepted
5 as impeachment evidence. HARADA would not have been
6 able to make this statement in an affidavit, and
7 he should not be able to as a person preparing this
8 document for the purpose of writing a book.

9 MR. COMYNS CARR: Your Honor, in my submission
10 this is on quite a different footing. This is a con-
11 temporary statement made by one alleged conspirator,
12 namely KONOYE, by another, namely MINAMI.

13 THE PRESIDENT: By a majority, the objections
14 are sustained and the document rejected.

15 MR. COMYNS CARR: I now offer in evidence
16 IPS document No. 3150-249A relating to 13 August, 1937
17 regarding a conversation between HARADA and HIROTA
18 about the Shanghai Incident which was denied by the
19 witness HORINOUCHI at page 29,764-6.
20

21 THE PRESIDENT: Mr. Yamaoka.

22 MR. YAMACKA: May it please the Tribunal,
23 the subject matter covered by this tender is contained
24 in defense exhibits 3280, record 29,934; exhibit
25 3180-D, 29,935; and also in the OKAMOTO affidavit,
defense exhibit 3274, record 29,916; and in the

2642, record page 22,894.

1 This excerpt from the Memoirs contradicts
2 this evidence.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: I wish to object to this
5 document. I shouldn't perhaps consider it worthwhile
6 to do so if it were only that this document is a
7 congeries of opinions, conclusions, as is shown by
8 the language "I keenly feel" so and so; "I believe,
9 I believe"; "it is truly regrettable."

10 I think the interesting thing, however, is
11 that this is not even Baron MARADA, or whoever may
12 be the author of his memoris, who feels these things.

13 For if we turn to the complete translation of this
14 chapter, we find that the entire matter contained in
15 this document is a part of a letter from this informant,
16 Captain TAKAGI, whoever he may be.

17 This document, therefore, not only, as Mr.
18 Comyns Carr said, deals with the letter of TAKAGI's
19 but is in fact a part of one of those letters and I
20 submit should be rejected on the same ground as in
21 the case of the letter from TAKAGI in the preceding
22 document.

23 MR. FURNESS: If your Honor please --

24 THE PRESIDENT: By a majority the objection

1 as a thing to be actually accomplished at the date
2 which purports to be the date of this interview,
3 the 27th of October.

4 Additionally on the question of probative
5 value, I point out that this purported conversation
6 is recorded by someone whose identify is not dis-
7 closed, and we have absolutely no guarantee of any
8 nature that it correctly represents even the substance
9 of any conversation which ever occurred.

10 That much on the probative value.

11 On the importance of this document, I think
12 the language correction just made has very effectually
13 disposed of what seemed to be advanced as the chief
14 ground for its introduction; that is, if I understand
15 correctly, this was being offered to show that the
16 suggestion of abrogation of the secret agreement
17 annexed to the Anti-Comintern Pact did not originate
18 with the Foreign Minister but with the German side,
19 a thing which I might remark was never suggested to
20 any of the witnesses who are now alleged to be
21 rebutted by this document. Unless my memory deceives
22 me, and I am quite sure it does not, none of the three
23 witnesses named was ever cross-examined to any extent
24 on that point; in fact one of them did not take the
25 stand, the prosecution waiving cross-examination

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United States three. That is exhibit 3838-B, the second
1 entry.

2 I would call attention by way of deviation here
3 to the fact that table A and table B, and also table C,
4 with respect to battleships, should be reduced by eight
5 battleships, in view of the testimony of Admiral
6 Richardson, transcript 11,235, not disputed in this case,
7 that the attack on that date, in the morning, either
8 destroyed or severely damaged eight of the United
9 States battleships indicated on these charts.
10

11 Exhibit 3838 contradicts 3003-A in the follow-
12 ing classifications:

13 Battleships, 15 instead of 17.

14 Destroyers, 142 instead of 172, and

15 Miscellaneous types, 176 instead of 1192.

16 Exhibit 3838-B contradicts exhibit 3003-B in
17 the following classifications:

18 Under construction: Aircraft carriers, 10
19 instead of 22.

20 Light cruisers, 18 instead of 31.

21 Destroyers, 88 instead of 256.

22 Submarines, 38 instead of 96, and

23 Miscellaneous, 349 instead of 895.

24 IPS document 3341, now exhibit 3838-A, as pre-
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24 IPS document 3341, now exhibit 3838-A, as pre-
25 pared by Mr. Ray, gives comparative strength in Pacific

1 Ocean areas. This table, therefore, further provides
2 correction or position for exhibits 3003-A and 3003-B
3 as purporting to present comparative naval strength of
4 Japan and the United States on 7 December 1941.

5 That is all the comment that I care to make,
6 sir, about the comparisons in correcting the record.

7 THE PRESIDENT: Are you sure you have called
8 the right number of these exhibits?

9 CAPTAIN ROBINSON: I beg pardon, sir?

10 THE PRESIDENT: I am told you are quoting ex-
11 hibit A when you really mean exhibit B.

12 CAPTAIN ROBINSON: On table C, I should have
13 3838-B instead of 3833-B; I see that. In order to have
14 the record straight, may I give the IPS document number
15 and the exhibit number opposite?

16 IPS document 3340 is exhibit 3838; 3341 is
17 3838-A, I see, and IPS document 3342 is 3838-B; is
18 that correct?

19
20 On the order of proof, if the Court please,
21 there are three documents listed which may be offered in
22 evidence, although they are merely supplementary to these
23 three charts and are not a necessary part of them.

24 THE PRESIDENT: Mr. Brannon.

25 MR. BRANNON: The defense submits that IPS
document 3336 is highly relevant, and if the prosecution

1 THE PRESIDENT: Mr. Oneto.

2 MR. ONETO: I present in evidence IPS document
3 No. 3367. It is a report established by General Martin,
4 Commander in Chief of the troops in Indo-China, and
5 giving a review of events at Langson in September 1940.

6 This document is offered to rebut the statement
7 made by the accused TOJO that: "an exchange of firing
8 took place between the Japanese and French troops on the
9 border between French Indo-China and China", (Transcript,
10 page 36,202), and that this "small encounter of arms
11 was settled within the same day" (Transcript, page 36,203).

12 This review of events at Langson set forth
13 the importance of the battle which occurred in this
14 area and contradicts the declaration of the accused
15 TOJO who tried to minimize this battle.

16 MR. LAZARUS: Mr. President, I see that the
17 Japanese and the American attorneys for General TOJO
18 are not present, so on his behalf I will take the
19 general objection that the accused have offered against
20 this type of evidence.

21 THE PRESIDENT: Well, we have not seen the
22 document yet. We are waiting to be supplied with
23 copies.

24 By a majority the objection is overruled and
25 the document admitted on the usual terms.

Officer commanding the Japanese Division at Longtcheou
had a letter ultimatum intended for the High Command,
sent to the Commanding Officer at Dong Dang, giving the
information that the Japanese troops would enter Indo-
China peacefully and would pass through Hanoi and that
no armed resistance should be offered.

"At 2200 hrs. The Japanese enter Tongking
in battle formation on the front Binhi Chima. Sergt.
Dubuc on duty near Dong Dang, wounded by a bayonet at
2210 hrs, fired after challenging.

"The Corporal of the blockhouse at Namquan
on duty about 22.25 hrs fired shots in the air after
challenging on noting suspicious movements.

"Attack on the Namquan blockhouse and positions
at Dong Dang by artillery and tanks during the night
and morning 22/23 September

"23..../.../..."

"23 September - The post Dong Dang occupied
in the morning.

"At 0700 hrs. - Intervention by Colonel KOIKE,
General NISHIHARA's Chief of Staff, to stop firing; could
only apply to elements of the first line who did not
know of the agreement (or were purposely ignoring it).

"23 September (Continued)

"French ceased fire on condition Japanese

1 is no intention on our part to make misleading quota-
2 tions out of these memoirs. And in any event we
3 respectfully submit that if the Tribunal will go over
4 these alleged omissions, that is, in the originals,
5 the main purport in context and the purpose of the
6 tender will be made obvious.

7 THE PRESIDENT: Well, they must be in evidence
8 before we can go over the omitted parts.

9 MR. YAMAOKA: Well, if your Honors please,
10 Exhibits 3774 and 3777-B and 3778-A were introduced by
11 the prosecution generally to show that Mr. HIROTA,
12 being part of the government at that time, took an
13 uncompromising stand on naval disarmament.

14 THE PRESIDENT: A majority will admit this if
15 you include the omitted parts. Are they extensive?

16 MR. YAMACKA: I don't know which part Mr. Comyns
17 Carr desires, but I shall be very glad to oblige him.

18 THE PRESIDENT: Read them after the recess.
19 We will recess for fifteen minutes.

20 (Whereupon, at 1045, a recess was
21 taken until 1100, after which the proceed-
22 ings were resumed as follows:)

23
24
25

1 prosecution exhibits 3774-A, record 37,646; 3777-B,
2 record 37,668; and 3778-A, record 37,672.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: If the Tribunal please,
5 this document doesn't answer anything in any of
6 those exhibits. If the defense wanted it, they should
7 have put it in as part of their case.

8 MR. YAMAOKA: May it please the Tribunal,
9 this excerpt further shows that Mr. HIROTA was in
10 favor of rapprochement and contradicts the prosecu-
11 tion exhibits above specified.

12 The prosecution has often stated that there
13 have been inconsistencies in Mr. HIROTA's public
14 pronouncements and some of his actions, and they have
15 endeavored to fortify that with the exhibits I have
16 just mentioned. This tender shows the consistency
17 of action between Mr. HIROTA's pronouncements and
18 his dealings with the various parties in connection
19 with the disarmament question.

20 THE PRESIDENT: By a majority the objection
21 is overruled and the document admitted on the usual
22 terms.

23 CLERK OF THE COURT: Chapter 155 of the
24 SAIONJI-HARADA Memoirs will receive exhibit No. 3872
25

1 to indicate that Mr. HIROTA as Foreign Minister might
2 have been a party to the breach of the assurances.

3 THE PRESIDENT: By a majority the objections
4 are overruled and the document admitted on the usual
5 terms.

6 CLERK OF THE COURT: Chapter 247 of the
7 SAIONJI-HARADA Memoirs will receive exhibit No. 3875
8 for identification only; the excerpt therefrom, being
9 defense document 3013-D, will receive exhibit No.
10 3875-A.

11 (Whereupon, the document above re-
12 ferred to was marked defense exhibit 3875
13 for identification; the excerpt therefrom
14 being marked defense exhibit No. 3875-A and
15 received in evidence.)

16 MR. YAMAOKA: May I respectfully invite the
17 attention of the Tribunal to the fact that the chapter
18 number is missing on this excerpt, but it should be
19 Chapter 247.

20 I shall read exhibit 3875-A.

21 "On August 3 MATSUDAIRA, Chief Secretary to
22 the Lord Keeper of the Privy Seal, told me that on
23 August 2 the Chief of the General Staff proceeded to
24 the Palace and said to the Emperor that the Army would
25 send the troops as far as the Paoting line but would

1 to indicate that Mr. HIROTA as Foreign Minister might
2 have been a party to the breach of the assurances.

3 THE PRESIDENT: By a majority the objections
4 are overruled and the document admitted on the usual
5 terms.

6 CLERK OF THE COURT: Chapter 247 of the
7 SAIONJI-HARADA Memoirs will receive exhibit No. 3875
8 for identification only; the excerpt therefrom, being
9 defense document 3013-D, will receive exhibit No.
10 3875-A.

11 (Whereupon, the document above re-
12 ferred to was marked defense exhibit 3875
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2 was rejected by the Tribunal. If it had been admitted
3 it might perhaps have been admissible to introduce this
4 document, although there is nothing in this document
5 in fact to the contrary. If this document is admitted
6 now, I would ask the Tribunal also to admit the one
7 which they previously rejected, because, in my sub-
8 mission, it would be clearly unfair to have the one with-
9 out the other.

10 THE PRESIDENT: Mr. Yamaoka.

11 MR. YAMAOKA: May it please the Tribunal, the
12 many excerpts introduced by the prosecution from the
13 SAIONJI-HARADA Memcirs purport to show that Mr. HIROTA
14 agreed with the army in its views. This excerpt is
15 tendered for the purpose of combatting that, and we
16 therefore submit that it is important and has probative
17 value. Furthermore, I might state there is the charge
18 of general conspiracy from 1928 to 1945 against Mr.
19 HIROTA, and this excerpt is tendered as showing non-
20 cooperation and opposition to the army and the General
21 staff. We respectfully submit that it may have an
22 important bearing on the accused's mens rea.
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1 MR. BLAKENEY: Of course, because he knew
2 the diplomatic practice, your Honor.

3 THE PRESIDENT: This rests on my vote; there-
4 fore I have taken care with it. By a majority the
5 objection is sustained and the document rejected.

6 MR. BLAKENEY: Lastly, I tender for identifi-
7 cation the Foreign Ministry Treaty Bureau's "Report
8 of Activities" for the year 1941 and offer in evidence
9 an excerpt therefrom, defense document 3039. This
10 document is offered to rebut any possible inference
11 contained in prosecution exhibit No. 3835, transcript
12 pages 38,065, et sequentia that the abrogation of the
13 secret agreement of the Anti-Comintern Pact was
14 brought about through German initiative, as alleged
15 by the prosecutor at transcript page 38,061.

16 THE PRESIDENT: Any objection?

17 Admitted on the usual terms.

18 CLERK OF THE COURT: The book entitled
19 "Report of Activities for the Year 1941," printed in
20 Japanese, will receive exhibit No. 3902 for identifi-
21 cation only and the excerpt therefrom, bearing defense
22 document No. 3039 will receive exhibit No. 3902-A.

23 (Whereupon, the book above referred
24 to was marked defense exhibit No. 3902 for
25 identification; the excerpt therefrom, being

1 throughout the witness' affidavit he refers to what
2 power and what jurisdiction the Foreign Ministry had
3 with regard to prisoners of war. He refers, in
4 addition, to a bureau set up within the Foreign Ministry.
5 He suggests that that bureau did not have any real
6 responsibility with regard to prisoners of war.

7 THE PRESIDENT: Well, that document contra-
8 dict's him. At most you can expect an admission that
9 he was wrong and, thereby, destroy his credit.

10 COLONEL MORNANE: With great respect, your
11 Honor, I don't agree with that. I submit that his
12 affidavit is susceptible of some other explanation.

13 THE PRESIDENT: Has he left anything obscure
14 that could be rectified by that document?

15 COLONEL MORNANE: He has left something ob-
16 scure for the rectification of which this document can
17 form the groundwork.

18 THE PRESIDENT: Well, proceed to cross-examine
19 him. We will see whether you are correct or not.
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will receive exhibit No. 3913.

1 MR. COMYN'S CAUSE: May it please the Tribunal,
2 this document is of the same character as the last
3 except that it only begins the story in February 1945.
4 We submit that it should be rejected on the same
5 grounds as Admiral YONAI's affidavit.

6 THE PRESIDENT: It was admitted thinking
7 there was no objection.

8 MR. LOGAN: Shall I read it, if the Tribunal
9 please?

10 THE PRESIDENT: It is admitted on the usual
11 terms.

12 (Whereupon, the document
13 above referred to was marked defense
14 exhibit No. 3913 and received in evidence.)

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1 that the accused did not personally have that power
2 but acted through the Emperor. I may have been
3 guilty in the framing of my question.

4 ACTING PRESIDENT: Your question was all
5 right. The only point I am raising is this: that
6 he didn't have to go into that long dissertation to
7 tell us that.

8 BY MR. BRANNON (Continued):

9 Q Do you know of any case in the history of
10 Japan where the Navy Minister discharged the Naval
11 Chief of General Staff by going to the Emperor
12 against the wishes of the Chief of Naval General
13 Staff?

14 A It is my understanding that there has been
15 no such case.

16 Q Well, was it your duty to report regularly
17 to the Diet?

18 A My duties and also a long prevailing
19 practice of custom.

20 Q Regarding the question of Japanese naval
21 confidence in regard to the war, I will ask you if
22 you heard the accused KAYA testify before this Tri-
23 bunal that Admiral NAGANO, at a liaison conference
24 as late as November 1, 1941, said that the Navy was
25 not confident of over a two year war?

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I might finish my presentation right now if
the prosecution will permit, because the next two
documents need not be read but only offered in evi-
dence: And in fairness to the **prosecution**, who may
wish to question the accused concerning these docu-
ments, I would like to offer them in evidence at this
time.

We offer in evidence defense document 622-B-1,
which is an excerpt from the interrogation of Admiral
SHIMADA by the prosecution dated 14 March 1946 at
Sugamo Prison. It is offered for the purpose of
disproving the inference cast by a previous excerpt
from the interrogation of Admiral SHIMADA, introduced
by the prosecution and appearing on page 10,194 of
the record, that he knew about naval operational plans,
including the Pearl Harbor attack plan before becoming
Navy Minister.

ACTING PRESIDENT: It may be admitted in evi-
dence.

CLERK OF THE COURT: Defense document 622-B-1
will receive exhibit No. 3573.

(Whereupon, the document above
referred to was marked defense exhibit
3573 and received in evidence.)

MR. BRANNON: We offer in evidence defense

1 please, if this inquiry is going to be devoted to
2 the subject announced, namely, oil, there is no
3 objection whatever. But the prosecution does object
4 to this witness' using that question as a means of
5 presenting his views on other matters.

6 MR. BRANNON: We quite agree with the prosecu-
7 tion, and I will ask you, Admiral, to confine your
8 answer to the question of oil, omitting other matters
9 as much as possible.

10 A (Continuing) Isn't the point in the question
11 that I am not considering the question of oil very
12 seriously?

13 Q Yes, the question was that, is not one
14 of the reasons urged for making war on the United
15 States; is not one of the reasons the economic strangu-
16 lation with regard to oil, and you said, "That was not
17 a fact." I want to ask you if that is your answer
18 and if you want to accept that now as your answer.

19 CAPTAIN ROSINSON: The prosecution objects
20 to the extent that that question may be calling upon
21 the witness to either repeat or revise his answer of
22 yesterday.

23 ACTING PRESIDENT: Ask him what he meant by
24 that answer.

25 BY MR. BRANNON (Continued):

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 ACTING PRESIDENT: Mr. Brooks.

4 MR. BROOKS: If the Tribunal please, in this
5 exhibit, 3579, I wish to submit the answers at the
6 top half of pages 12, 19, 20 and 38 to the Tribunal
7 for consideration as a possible answer to their inquiry
8 made through the President in relation to exhibit
9 523. Exhibit 523 appeared at record page 6174 and
10 was a telegram sent to Berlin by Ott. Paragraph 22
11 of exhibit 3375, court record page 32,235, KOISO's
12 affidavit, discusses this exhibit 523.

13 The President of the Tribunal asked KOISO
14 on the witness stand why Ott would make statements
15 about KOISO as he did in this exhibit 523, which
16 KOISO denied as having been made by himself; and I
17 submit that by adopting these answers on the pages
18 hereinto referred the Tribunal may consider this as
19 a possible answer to their inquiry thereon and as
20 bearing out KOISO's reply that it must have been an
21 attempt to impress the higher officials.

22 I wish the Tribunal to consider this as
23 evidence on the pages referred to in behalf of KOISO
24 as well as on behalf of SHIRATORI--these answers.

25 MR. CAUDLE: Mr. President.

1 please, if this inquiry is going to be devoted to
2 the subject announced, namely, oil, there is no
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13 Q Yes, the question was that, is not one
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23 ACTING PRESIDENT: Ask him what he meant by
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25 BY MR. BRANNON (Continued):

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23 evidence on the pages referred to in behalf of KOISO
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25

MR. CAUDLE: Mr. President.

SUZUKI

DIRECT

35,204

1 the continuation of the negotiation with America, war
2 preparations having been considered only as a safeguard
3 against a really remote danger.

4 "(14) After the September 6 Conference I was
5 requested directly by the Navy Vice-Minister for an
6 additional allocation of 300,000 tons of steel. At
7 about the same time the Director of the Equipment Bureau
8 of the War Ministry also asked me for more steel. I
9 refused these requests. Both ministries, especially
10 the Navy, repeated their demands, setting forth, how-
11 ever, different figures each time for their requirements.
12 The question was left pending until the war was actually
13 decided upon."

14 ACTING PRESIDENT: This would be a good place
15 to stop. Let us adjourn until 1:30.

16 (Whereupon, at 1200, a recess
17 was taken.)

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1 that was given in the interrogation was sort of
2 confusing.

3 (To the Court:) Your Honor, if you will permit
4 me, I can more or less quote what was intended. We
5 seem to have some difficulty in finding it and I don't
6 have a copy of that document.

7 (To the Witness:) This is part of an answer
8 submitted by you in answer to another question which
9 does not seem to have any bearing on this, but I will
10 quote this part of the answer, and I quote:

11 "There began my connection with the Army
12 people and people, for instance the papers, and all
13 of those things, you know, saying that the Foreign
14 Office, saying that they acquiesced in the policy
15 enacted by the Foreign Office, while it is not the
16 case."

17 Could you have meant that the public and
18 the press were insinuating that the Foreign Office
19 acquiesced in the policy of the Army, which was not
20 the case?

21 MR. SANDUSKY: Mr. President, I suggest that
22 this is a very obvious attempt to suggest to the witness
23 the answer he should give, but, more important--

24 THE INTERPRETER: Just a moment, please.

25 The witness said, "Yes, I think so."

distinction.

1 GENERAL VASILIEV: I request that the ruling
2 of the Court as to our document be intimated.

3 THE PRESIDENT: I am pointing out that differ-
4 ence. You may make submissions if you wish.

5 GENERAL VASILIEV: Defense document 2686-A
6 quotes summary date for a number of years. Reference
7 is made to page 23,480. I submit that we are entitled
8 to present summary date as well.

9
10 THE PRESIDENT: That raises another question.
11 We haven't that document.

12 GENERAL VASILIEV: This is a document on pre-
13 cisely the same subject.

14 THE PRESIDENT: Are you speaking of defense
15 document 1511, exhibit 2647-A?

16 GENERAL VASILIEV: Yes, but there are three
17 defense documents, 2685, 2686 and 2687. Therefore we
18 ask that our document be admitted.

19 THE PRESIDENT: I think I will have to look
20 into it further. Most of my time during the recess was
21 spent attending to a deputation about taking the Mongolian
22 witness' evidence, and I perhaps was not able to make
23 sufficient research in the few minutes I had. I would
24 like to defer this until I have had a chance to look at
25 all those documents. I have not had that opportunity.

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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

2 MARSHAL OF THE COURT: The International

3 Military Tribunal for the Far East is now resumed.

4 THE PRESIDENT: Major Blakeney.

5 MR. BLAKENEY: By leave of the Tribunal, I
6 should like to make the remarks which I mentioned this
7 morning relative to the question of recess. The prosecu-
8 tion having been notified are here and I understand
9 willing that we should proceed.

10 I should like to be permitted, on behalf of
11 many American counsel sharing a common interest, to
12 add a word to what Dr. UZAWA has said.

13 Much evidence, of a heterogeneous nature, has
14 been introduced within the past fortnight, and of
15 course evidence is still being introduced today. The
16 Tribunal has already undertaken to grant to such de-
17 fendants as may be affected the right in proper circum-
18 stances to reopen their cases to meet this. Moreover,
19 as the Tribunal is aware, this evidence has not been
20 introduced even nominally as in rebuttal of the defense
21 case, but on the basis of a wholly different test, the
22 application of which has in fact resulted in admission
23 of much new matter. All this the Tribunal well
24 realizes, as is evidenced by the President's statement

witness because that leads up to the next question.

1 May the witness answer?

2 THE PRESIDENT: Yes, he may.

3 Q Was that your main mission?

4 A I would like to have the question repeated.

5 (Whereupon, the last question was
6 read by the official court reporter.)

7 THE PRESIDENT: Why do you want to ascertain
8 what his main mission was? He has told us what the
9 important missions were. He told us in his affidavit
10 he received such information. But whether it was his
11 main duty or not is beside the point, is it not? It
12 certainly is a different question but does not lead
13 us anywhere. We are all becoming apprehensive at the
14 waste of time involved in a detailed cross-examination
15 that does not help at all.

16 MR. CUNNINGHAM: Well, your Honor, on a
17 cross-examination you just don't ask a man: "Did you
18 kill the man?" You have to kind of lead up to it with
19 a few details.

20 THE PRESIDENT: Does that consist us in drawing
21 a sharp distinction between main missions and
22 important missions?

23 MR. CUNNINGHAM: I think it has a bearing.

24 THE PRESIDENT: We do not.

OSHIMA

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1 "1. 'The Preamble Draft' is that this treaty
2 is an extension of the existing Anti-Comintern Pact, and
3 is a plan which makes clear the intent that the Soviet
4 Union is the chief target. Care was taken so as not
5 to give the impression from the wording that England and
6 the United States are the greatest enemies.
7

8 "2. The Text Plan, Obligation of Military
9 Aid in Article 3, is not instantaneous or unconditional.
10 In order to nullify the danger of becoming involved in
11 a purely European problem against our will, a conference
12 before we enter with military aid is the principle.
13

14 "3. In order to allow the purport of this
15 treaty to take on a defensive character, 'menace and
16 attack' will be limited to 'provocation.'

17 "4. Furthermore, the text of the plan is at
18 present under zealous consideration."

19 Q General OSHIMA, in compliance with your in-
20 structions you communicated the Japanese revisions at
21 once to Ribbentrop, didn't you?
22

23 A Yes.
24

25 Q Now, you have told us about your trip to Eng-
26 land and Belgium, what was the date of your trip?
27

28 A I do not recall the exact date but it was
29 shortly after becoming ambassador. I think it was
30

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such remarks.

Q Was not the official request for the Japanese entry into the Russian war made on 9 July 1942?

A According to my recollection I feel that the official request to Japan was made in 1943 and, as I have been repeatedly telling you, this is only my own recollection. Previous to that time many of their requests were repeatedly rejected. This date to which you refer of July 9, 1942, I believe that if a request was made at that time it was denied but that request was not official -- September instead of July.

Q Regardless of whether the request was official or unofficial, did you at this conference on 9 July 1942 with Ribbentrop state that you were well pleased with developments in Russia and North Africa and that you yourself were convinced of the imperativeness of a Japanese attack on Russia?

A I have no such recollection.

Q Did you not indicate to Ribbentrop that you were very enthusiastic over the idea and that you would immediately report the request to Tokyo?

A Does not your question really mean this, that I refused the request on the 9th of July?

Q No, I mean just the opposite, that you
1 agreed to submit the request to Tokyo.

A I see. If on the 9th of July there was a
2 request from the German side I must have faithfully
3 transmitted it to the Japanese Government.

Q And did you also indicate that you were
6 enthusiastic over the idea of Japanese participation
7 in the Russo-German War?

A I do not think I conveyed anything except
9 the expressions of diplomatic courtesy.

Q Do you mean to tell this Tribunal that
11 your approval of the entry of Japan into the Russo-
12 German War was nothing more than a diplomatic gesture
13 of courtesy?

A No, that is not so. The duty of an
16 ambassador is to faithfully convey whatever one
17 government wants to say to another; and what I said
18 was that even though I knew in my own heart that it
19 was impossible for Japan to carry on a war on two
20 fronts, it was my duty to convey any German request
21 in this regard to the Japanese and thus at least to
22 preserve the formal diplomatic procedure.

Q I don't intend to criticise you for conveying
24 the request. I am asking you if you didn't advise
25 Ribbentrop that you were enthusiastic over the

OSHIMA

CROSS

1 Q General OSHIMA, this morning you advised us
2 that you arrived in Berlin on 19 February 1941. Do
3 you recall whether there was a reception accorded you
4 at the train upon your arrival?

5 A No, there was no reception on the train.

6 Q Who met you at the train?

7 A The State Secretary for Foreign Affairs.

8 Q Who was he?

9 A Weiszaecker.

10 Q Now, General OSHIMA, I am going to show you a
11 letter prepared by General Weiszaecker bearing date of
12 February 17, 1941, and I will ask you if that does not
13 refresh your recollection on the date as to the date of
14 your arrival.

15 A It does refresh my recollection.

16 Q Then, now will you tell the Tribunal the date
17 of your arrival?

18 A It was the 17th of February. I was mistaken.

19 Q And the telegram that you stated that had
20 arrived before your arrival actually arrived after your
21 arrival, didn't it?

22 A That I do not know because I wouldn't look at
23 a telegram immediately upon arriving in Berlin. In any
24 case when I told you it was the 19th of February that
25 was a mistake in my memory, on my part.

so either.

1 We are getting into a moot question again,
2 your Honor, because I am not ~~sue~~ I am going to ask
3 him back. I merely want to preserve my record.
4

5 ACTING PRESIDENT: Well, I am not going to
6 make a ruling on that without the vote of the
7 Tribunal. Personally, I do not agree with you. We
8 will deal with the matter when it arises.
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CAPTAIN ROBINSON: Will the witness go ahead?

1 A I have already replied to the first question,
2 but I did not quite catch the last question.

3 Q The last question was: As representing the
4 Navy were you not the Minister of State and not the
5 Naval Chief of Staff Admiral NAGANO? Under the Con-
6 stitution of Japan was it not your duty and obligation,
7 as Minister of State, to give advice to the Emperor?

8 A What kind of advice?

9 Q Advice in regard to the navy, presumably.

10 A Even if matters related to the navy, if it was
11 a question of operations, that was the responsibility of
12 the Naval High Command and not mine. You would under-
13 stand that position clearly if you would see the Con-
14 stitution.

15 Q I have seen the Constitution. What part of it
16 are you referring to, Article 55?

17 A Article 11.

18 Q Yes. Now, as Navy Minister, was it not your
19 responsibility to see that the attack did not take place
20 before the command of the Emperor was complied with, or
21 are you telling us that all of that responsibility can
22 be placed on the Chief of the Naval General Staff, who
23 was not a Minister of State?

24 MR. BRANNON: I object to the procedure adopted;

NOTE:

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pages and should be substituted for the
corresponding pages in the record.

SHIMADA

CROSS

34,794

1 Navy Minister and the Chief of the Naval General
2 Staff have answered my question about the previous
3 matter with considerable confidence, so instruct
4 TOJO to proceed as planned."

5 Now, Admiral, the quotations I have read
6 from KIDO's direct testimony, is that the procedure
7 that was adopted and not the procedure which Captain
8 Robinson read to you?

9 A The procedure was exactly as stated in
10 Marquis KIDO's--affidavit, is it, or diary?

11 MR. LOGAN: Yes, affidavit--both, and diary.
12 Now, if the Tribunal please, may I ask for
13 your permission to ask one or two questions on a
14 matter which I thought Admiral SHIMADA had answered
15 on my cross-examination but which, upon examination
16 of the record, I find that I was mistaken in thinking
17 that he had answered the questions. There will be
18 one or two questions.

19 ACTING PRESIDENT: You may ask.
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1 position vis-a-vis her negotiations with the United
2 States unless there was some powerful control over
3 the General Staff Office of the army.

4 THE INTERPRETER: Slight correction:

5 The purport of my meaning as set forth there
6 in my affidavit is that in this connection, in order
7 to bring about a settlement of the negotiations between
8 Japan and the United States, it would be necessary first
9 of all to effect a powerful control over the General
10 Staff Office of the army. Unless that were done, it
11 would be difficult.

12 Q In other words, Admiral, do you mean that when
13 TOJO took office as Premier, his position became
14 entirely different from his previous position when he
15 was merely War Minister?

16 A The TOJO who was War Minister in the KONOYE
17 Cabinet was entirely on a different position when he
18 became TOJO, the Prime Minister. As Prime Minister,
19 he must listen to and coordinate the opinions of all
20 the cabinet ministers. Furthermore, as Prime Minister,
21 he would have more frequent opportunities for audiences
22 with His Majesty, the Emperor, and the Emperor's
23 repeated wishes for peace -- ardent wishes for peace
24 would, by their repetition, impress itself upon the
25 mind of the Prime Minister.

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1 was any instance of survivors of merchant vessels
2 being machine gunned on the Indian Ocean, although
3 I cannot believe it, I am expressing my heart-felt
4 regret in the supposition that such an event might
5 have occurred.

6 Q I am not talking about your heart-felt
7 regrets, Admiral. I am asking about your statement
8 that you assumed responsibility.

9 Now, I am asking what occasions you
10 assumed responsibility for. You will specifically
11 state those which you feel were your responsibility.
12 If I may specify, do you assume responsibility --

13 ACTING PRESIDENT: Aren't we going into
14 too much detail, Captain?

15 CAPTAIN ROBINSON: I think this final
16 point --

17 ACTING PRESIDENT: It seems to us that your
18 present line of questions is more or less argument-
19 ative.

20 CAPTAIN ROBINSON: If the Court please, I'd
21 like to be heard for just a moment.

22 Evidence before the court on the Dutch
23 ship Tjisalak, the British ship Behar, and the
24 American liberty ship Nicoll --

25 ACTING PRESIDENT: We know all that. It

OSHIMA

DIRECT

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"7. CHINA INCIDENT.

"The outbreak of the China Incident in July 1937 was a complete surprise to me. I had been in Berlin as Military Attaché since the Spring of 1934 and was completely out of touch with the China problem. I learned by telegrams from the General Staff after the outbreak of the incident of the non-aggravation and non-extension policy of the Japanese Government and the central army authorities, and believed that it would soon be settled locally.

"It became gradually clear that it would not be settled quickly, and I was much concerned that the position of Japan would be endangered in the face of the Soviet armament in the Far East. At the end of December 1937 I received an instruction from the General Staff to request the German army that peace be offered to Chiang-Kai-Shek through General Falkenhausen who was in China as the military advisor to the Chinese Government. I approached the German army at once. General Keitel, Chief of OKW, agreed, and he initiated some action to that end. This attempt at peace did not materialize and had to be abandoned when the efforts of mediation by Ambassador Trautmann were terminated.

33,991

OSHIMA

DIRECT

"8. HIMMLER'S MEMORANDUM.

"1) The prosecution exhibit 489, Himmler's memorandum, transcript pages 6,026-6,028, says that Himmler visited me on 31 January 1939 and talked with me concerning counter-intelligence activities against Soviet Russia. But Himmler never visited me at that time. I cannot remember seeing him then, however hard I try to refresh my memory.

"During my ten years' stay in Germany, I had no special relations with Himmler either privately or officially. Only twice I received visits from him; namely, in the winter of 1936, when an official of the Japanese Home Office came to Germany in order to study measures for controlling communism, and I invited Himmler to a dinner party to solicit his assistance. This was done on behalf of this Japanese official. The other occasion was in March 1941, when I went to Germany as Ambassador for the second time, and Himmler visited me to return my courtesy call.

"Concerning the matters enumerated in this memorandum of Himmler I should like to explain as follows:

"2). In or about June 1937 while I was the Military Attaché my office in Berlin began, in accordance with instructions of the Chief of the General

date for one of the two posts before -- informally
1 to the Throne before the Premier-designate decides
2 on the personnel of his cabinet, because that would
3 give rise to a political issue. The proper procedure
4 is that after the Premier-designate has determined
5 upon the Navy Minister and the War Minister of his
6 cabinet, then the preceding Navy Minister and the War
7 Minister make the informal recommendation to the
8 Throne. That is the proper procedure.

9
10 THE MONITOR: Japanese court reporter.

11 (Whenceupon, the Japanese court reporter
12 read.)

13 A (Continuing) So I presume it is to that fact
14 KIDO is referring when he says in his diary to the
15 effect that the action -- when he mentions in his diary
16 that the action was rather overhasty.

17 There seems to be some doubt in your mind with
18 regard to making informal recommendations to the Throne
19 of the succeeding War Minister, but the procedure I
20 have mentioned is customary procedure. There is nothing
21 secret about it. It is the customary procedure. I
22 will repeat it again.--

23 Q No.

24 A (Continuing) so as to create no doubt. The
25 fact of "naiso", that is, making an informal suggestion

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1 relevancy or materiality of any of these matters of
2 which you desire the Tribunal to take judicial notice,
3 the prosecution could admit that they are facts, if
4 they be facts. You need not worry about judicial notice
under those circumstances.

5 MR. BROWN: Your Honor, let me say first of
6 all that the prosecution does not object to the
7 treaties referred to previously by Mr. Logan being
8 taken judicial notice of, although we do dispute their
9 relevancy to this case.
10

11 THE PRESIDENT: What about the Japanese
12 conspiracy law?
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1 relevant and material, as it was in the Nuernberg case;
2 by that I mean, as the general conspiracy as it existed
3 in Germany was in that case. And it is my recollection
4 that the Tribunal were greatly impressed with the fact
5 that there was no law of conspiracy in Germany, such as
6 is recognized in Anglo-American law, in view of the fact
7 that none of the accused were aware in their own country
8 that such a law existed outside and that they acted
9 accordingly.

10 THE PRESIDENT: They are assumed to know international law as part of their own system.

12 MR. LOGAN: The defense contention is, of course, that there was no such crime of conspiracy under international law, but we don't have to go into that at this particular time. But this is a question of whether or not there was such a crime of conspiracy under Japanese law which I presume they would presume to have known at the time of these acts which they are alleged to have committed.

21 For that reason, we are asking the Tribunal to take judicial notice of that law. I might --

23 THE PRESIDENT: We will consider that matter,
24 Mr. Logan.

25 MR. LOGAN: I might also say that we have approached this problem of proving this law by asking the

1 relevant and material, as it was in the Nuernberg case;
2 by that I mean, as the general conspiracy as it existed
3 in Germany was in that case. And it is my recollection
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6 is recognized in Anglo-American law, in view of the fact
7 that none of the accused were aware in their own country
8 that such a law existed outside and that they acted
9 accordingly.

10 THE PRESIDENT: They are assumed to know inter-
11 national law as part of their own system.

12 MR. LOGAN: The defense contention is, of
13 course, that there was no such crime of conspiracy under
14 international law, but we don't have to go into that at
15 this particular time. But this is a question of whether
16 or not there was such a crime of conspiracy under Japa-
17 nese law which I presume they would presume to have
18 known at the time of these acts which they are alleged
19 to have committed.
20

21 For that reason, we are asking the Tribunal to
22 take judicial notice of that law. I might --

23 THE PRESIDENT: We will consider that matter,
24 Mr. Logan.

25 MR. LOGAN: I might also say that we have
 approached this problem of proving this law by asking the

1 imagined that when the document was admitted that the
2 witness would take the witness stand.

3 THE PRESIDENT: They never tender the affi-
4 davit of the witness to be called until he is in the box.

5 You should decide later whether you want to
6 cross-examine him, after you have heard the answers to
7 the questions. Then, we may direct him to be called for
8 cross-examination.

9 MR. BROWN: If your Honor pleases.

10 MR. McMANUS: (Reading continued)

11 "Q Did you attend the Prefectural Governors'
12 Conference in 1933?

13 "A Yes, I did.

14 "Q How many prefectural Governors' Confer-
15 ences were there in 1933, and where were they held and
16 when?

17 "A There was only one in 1933, as was the
18 usual practice, and it was held in April in Tokyo.

19 "Q What was the ordinary procedure of the
20 Conference when you were the prefectural governor?

21 "A The Conference was always held at the
22 official residence of the Prime Minister. The conference
23 was usually initiated by an address of the Prime Mini-
24 ster to be followed by the addresses of the State Mini-
25 sters who had under their jurisdiction matters related

When IWAMATSU was recalled to the stand on
the 16th of September 1947, page 28,531 of the record,
Mr. Carr commented that the document had not as yet
been produced. The President stated "Not to produce
this further document may possibly be to suppress
evidence of lack of credibility." The President
further stated on page 28,532 of the record "If his
credibility was questioned by the prosecution, that
document should settle it one way or the other, and it
has not been produced. Now he is in the box."

I then stated to this Tribunal that the
document would be produced as expeditiously as
possible.

I should like to call to the attention of the
Tribunal that the document in question, with 16
supplements was submitted to Mr. Brown and Mr. Carr
shortly after the presentation of ARAKI's case. And
I am sure at this time that Mr. Brown will bear out
the truth of IWAMATSU's statement concerning this
document.

THE PRESIDENT: Mr. Brown.

MR. BROWN: Your Honor, I should say that
when I heard these last remarks of Mr. McManus, it was
the first intimation I had that this particular matter
was going to be raised just now and therefore what I

SHIMADA

CROSS

37,034

1 counsel to ask questions in redirect bringing up new
2 subject matter is in effect to permit the prosecution
3 or others to cross-examine on the scope of new subject
4 matter, which would be a direct infringement on the
5 meaning of the ruling of the Tribunal this morning.
6

7 Secondly, to have the accused repeat what
8 he has stated in his original affidavit is not new
9 evidence, but merely reiteration of what he has
10 previously stated. To permit such examination, Mr.
11 President, would in effect be to allow the counsel
12 to do something through the good graces of this accused
13 in taking the stand at his own request, that he could
14 not have done before.

15 THE PRESIDENT: As put by a member of the
16 Tribunal, this amounts to an application to reopen
17 SUZUKI's case, and to call SHIMADA as a witness in
18 SUZUKI's favor, and SHIMADA may have rights to be
19 considered in that regard. Every answer that he gives
20 here exposes him to further risk of cross-examination,
21 which he is not obliged to take, perhaps.

22 I think the Court is against you, Mr. Levin.
23 Captain Robinson.

24 CROSS-EXAMINATION

25 BY CAPTAIN ROBINSON:

Q Directing your attention, Mr. Witness, to

1 THE PRESIDENT: The Pacific is on a list
2 handed to me with Mr. Logan's name alongside.

3 MR. BLAKENEY: I believe, your Honor, that
4 was the economic part of the Pacific phase which went
5 in yesterday, if I am not mistaken.

6 THE PRESIDENT: There is only the Russian
7 phase left besides this witness you just referred to.

8 MR. BLAKENEY: Such is my understanding.
9 And regarding the Russian phase, I can say that I am
10 prepared to proceed now by taking some witnesses out
11 of order, because, owing to mechanical difficulties,
12 we were not able to make service until this morning
13 in the case of most of our documents. If, on the
14 other hand, the Tribunal should see fit to adjourn
15 a quarter of an hour early, I believe I can promise a
16 much more efficient performance on Monday morning.

17 THE PRESIDENT: We will adjourn until half-
18 past nine on Monday morning.

19 (Whereupon, at 1540, an adjournment
20 was taken until Monday, 12 January 1948, at
21 0930.)
22 - - -
23
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25

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20 was taken until Monday, 12 January 1948, at
21 0930.)
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1 Tribunal will take judicial notice of it as I sub-
2 mitted the other day. If not, we will have to rest
3 with that reservation.
4

5 THE PRESIDENT: If the Tribunal decides not
6 to act on the agreement, I have no doubt they will
7 give you liberty to proceed to prove the law of Japan
8 in the usual way, but I do not anticipate any dis-
9 agreement. By "in the usual way" I mean in the manner
10 that a question of fact would be proved in any
national court.

11 MR. LOGAN: We will accept that, your Honor.

12 THE PRESIDENT: Captain Brooks.

13 MR. BROOKS: If the Tribunal please, I was
14 at this meeting, and I disagree as to the method set
15 out in this agreement, reserving my right to comment
16 on the premises as set forth by the prosecution. Some
17 of them I disagree with. There may be others that
18 have agreed with the method set forth for handling
19 these matters in order to save time for this Tribunal,
20 but I want the Tribunal to understand that that is my
21 position.
22

23 THE PRESIDENT: Mr. Levin

24 MR. LEVIN: Mr. President, I was not at
25 this meeting this noon; and, as I understood it, there
was to be a discussion in relation to whether or not

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1 THE PRESIDENT: The American practice before
2 military courts is not substantially different from
3 the British in this regard. I refer to Winthrop's
4 Military Law and Precedents, 2nd Edition, Volumes I
5 and II, page 345.

6 MR. COMYNS CARR: I understand that the
7 practice in some other countries is less strict with
8 regard to class of evidence admitted, and of course
9 this Tribunal is not bound by technical rules.

10 THE PRESIDENT: We are bound to give a
11 fair trial and we will not achieve that if we are
12 going to completely disregard these old well-established
13 rules based on justice.

14 MR. COMYNS CARR: I am not asking this
15 Tribunal -- }
16

17 In my submission, your Honor, the two prac-
18 tical tests in a trial of this kind and before an
19 international tribunal of this kind are, first of all:
20 is the evidence going to assist the Tribunal to arrive
21 at a true conclusion; and secondly and most important,
22 have the defense been given a fair opportunity of
23 meeting it. Of course all these points will arise
24 on particular documents, but in view of the general
25 remarks made by my friend Mr. Furness on that
subject, I thought it right to make those general

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The Tribunal met, pursuant to recess, at 1330.
MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Judge Nyi.

JUDGE NYI: May it please the Tribunal, with
regard to the date when the map was made and the organ-
ization which kept this map, I can -- I think we can
take for granted that they were all set out in the
remarks because the certificate is a printed form and
was given to the officer for signature. As he saw that
they were all set out in the remarks he might not find
it necessary to put them in. As a map is different
from a telegram or letter which would require exact
dating, we will take it that the date was July 30, 1933,
and the organization which kept it was the Chief of
General Staff.

If your Honors are satisfied with my explan-
ation, I shall still tender it. If your Honors think
that as far as this particular point is concerned it
needs further clarification we shall withdraw it for the
time being and we will have it filled -- items filled
and tender it as a later time.

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37,344-1/2

1 THE PRESIDENT: You may withdraw it if you
2 wish but I don't know that if you retender it again
3 the result will be any different. Do you withdraw the
4 document?

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terms.

1 CLERK OF THE COURT: Prosecution document
2 820-C, now exhibit 3269 for identification only,
3 will be marked as received in evidence and will
4 retain the same exhibit number.
5

6 The certificate of source and authenticity,
7 bearing the same document number, will receive
8 exhibit No. 3269-A.

9 (Whereupon, prosecution exhibit No.
10 3269, previously marked for identification,
11 was received in evidence, and the certifi-
12 cate thereto was marked prosecution
13 exhibit No. 3269-A and received in evi-
14 dence.)

15 MR. COMYNS CARR (reading): "The Course
16 Towards the Opening of the Imperial Conference
17 (January 14, 1938. East Asia Bureau. Section 1.
18 MATSUDAIRA).

19 "WANG KO-MIN recently put before Commander
20 TERAUCHI a question on these three points:

21 "1. Whether or not Japan will give full-
22 scale support to the new North China Regime.

23 "2. Whether or not it is Japan's intention
24 to regard CHIANG Kai-shek as a party to deal with.

25 "3. Whether or not it is Japan's intention

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: Your Honor, in our submission
3 this is a very important document, being the decision
4 as to general principles of national policy immediate-
5 ly after it was decided to have no dealings with Chiang
6 Kai-shek. Apart from the fact that the witness HORIN-
7 OUCHI declined to identify it, he had asserted in his
8 affidavit that he was in a position to tell us all about
9 HIROTA's opinions, the policy adopted by the government,
10 and so on, and to speak HIROTA's mind to us as well
11 as if HIROTA was speaking it himself. In our sub-
12 mission, the fact that he omitted all reference to a
13 decision of this kind rebuts his testimony in the strong-
14 est possible way.

15 THE PRESIDENT: The objection is overruled
16 and the document admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document 820-D,
18 now exhibit No. 3270 for identification only, will be
19 marked as received in evidence and will retain the same
20 exhibit number. The certificate of source and authen-
21 ticity, bearing the same document number, will receive
22 exhibit No. 3270-A.

23 (Whereupon, prosecution exhibit No.
24 3270, previously marked for identification,
25 was received in evidence, and the certifi-

1 of authenticity than the prosecution has submitted up to
2 this time, I respectfully submit that it would be a very
3 serious matter to charge HIROTA with the implication of
4 this document.

5 THE PRESIDENT: We don't want to hear you, Mr.
6 Carr. The objection is overruled and the document ad-
7 mitted on the usual terms.

8 CLERK OF THE COURT: Prosecution document 1841-
9 8B7, now exhibit 3271 for identification only, will be
10 marked as in evidence and will retain the same exhibit
11 number.

12 Certificate showing source and authenticity,
13 bearing the same document number, will receive exhibit
14 No. 3271-A.

15 (Whereupon, prosecution exhibit No.
16 3271, previously marked for identification, was
17 received in evidence, and the certificate
18 thereto was marked prosecution exhibit No.
19 3271-A and received in evidence.)

20 THE PRESIDENT: You may read it after lunch.
21 We will adjourn until half-past one.

22 (Whereupon, at 1200, a recess
23 was taken.)

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2 this time, I respectfully submit that it would be a very
3 serious matter to charge HIROTA with the implication of
4 this document.

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6 Carr. The objection is overruled and the document ad-
7 mitted on the usual terms.

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10 marked as in evidence and will retain the same exhibit
11 number.

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13 bearing the same document number, will receive exhibit
14 No. 3271-A.

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16 3271, previously marked for identification, was
17 received in evidence, and the certificate
18 thereto was marked prosecution exhibit No.
19 3271-A and received in evidence.)

20 THE PRESIDENT: You may read it after lunch.
21 We will adjourn until half-past one.

22 (Whereupon, at 1200, a recess
23 was taken.)

what happens.

1 MR. McMANUS: Your Honor, in so far as your
2 Honor has referred to the correction made by Captain
3 Kraft this morning, may I just ask your Honor, or at
4 least point out to the Court that the sentence in
5 Japanese concerning this particular sentence of
6 exhibit 3775-A contains a double negative.
7

8 THE PRESIDENT: It is a common form of
9 expression, grammatically correct. We do not mis-
10 understand it.

11 MR. McMANUS: But because of this, your Honor,
12 I understand it is very difficult to translate so,
13 consequently, I ask the Court, just for this one point,
14 to have it resubmitted to determine whether this is
15 in the present tense or the future tense. In view of
16 the few sentences before it, as it reads as corrected
17 by the Language Section, your Honor can readily see
18 that it does not make sense.
19

20 THE PRESIDENT: If Captain Kraft cares to
21 reply to you, Mr. McManus, he is at liberty to do so.
22

23 MR. McMANUS: Your Honor, all I request is
24 that it be resubmitted to determine whether it be in
25 the present or future tense.

25 THE PRESIDENT: Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): Sir, in

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1 if the document as a whole is read it will be seen
2 that there was a discussion between HARADA and KONOYE
3 at one time, KIDO at another time, and several other
4 people, and the subject matter --

5 THE PRESIDENT: You need not go any further
6 By a majority the objection is upheld and
7 the document rejected.

8 MR. COMYNS CARR: I now offer in evidence IPS
9 document 3150-264B, of the 14th of February 1938, being
10 the witness HOROUCHI's account of a Licenson Conference
11 of that date and an interview between the Chiefs of
12 Staff and the Emperor which was denied by him at pages
13 29,870-71. Another document relating to the same
14 matter to substantially the same effect was admitted
15 by the Tribunal on Friday last and is exhibit 3272 but
16 I desire to submit this document to impeach the credit
17 of the witness HOROUCHI who denied that he ever said
18 what he is stated here to have said.

19 THE PRESIDENT: No objection?
20 Admitted on the usual terms.

21 CLERK OF THE COURT: Prosecution document
22 3150-264 will receive exhibit No. 3790 for identifica-
23 tion only; the excerpt therefrom, being prosecution
24 document 3150-264B will receive exhibit No. 3790-A.
25

(Whereupon, the document above

referred to was marked prosecution exhibit
1 No. 3790 for identification, the excerpt
2 therefrom being marked prosecution exhibit
3 No. 3790-A and received in evidence.)
4

5 MR. COMYNS CARR: (Reading) "14 February 1938
6
7 I saw the Vice Foreign Minister at the Foreign
8 Ministry and he inquired: 'Have you heard about the
9 Liaison Conference of February 14th?' Therefore, I
10 (HARADA) replied: 'What about it?' To this, the
11 Vice Minister stated: 'At the Liaison Conference of
12 February 14, the Army said: "It is impossible to attack
13 Canton and Hankow in the future. We shall go as far
14 as the southern part of Shensi and up to the Yellow
15 River but we think it is impossible to advance as far
16 as Suchow." The Navy is saying that it would like
17 to advance its air base as far as Ankin , but the Army
18 is saying that it is impossible to go that far. The
19 reason why they say it is impossible to carry out mil-
20 itary operations as far as Anking lies in the fact
21 that military preparations must be made against Russia.
22 As a result the Navy is saying: "It is not wise to
23 continue as we are and extending the incident into
24 one of long term hostilities. On one hand, cessation
25 of war should be attempted through diplomatic manœuvres
and at the same time, our forces must advance without

MR. COMYNS CARR: Your Honor --

1 THE PRESIDENT: Do you wish to say anything,
2 Mr. Carr?

3 MR. COMYNS CARR: Your Honor, with regard
4 to the question of the importance of the matter --

5 THE PRESIDENT: That is the only question we
6 want you to address us on.

7 MR. COMYNS CARR: The next document I am going
8 to offer is perhaps a better one from that point of
9 view on the same question because it shows his co-
10 defendant ITAGAKI as pressing for his appointment, and
11 that was put to and specifically denied by UGAKI. I
12 think perhaps I will withdraw this one and raise the
13 point on the next one.

14
15 I offer in evidence IPS document 3150-2784
16 relating to 16 June 1938 and to Prince KONOYE's conver-
17 sation with Baron HARADA in which he told of the in-
18 sistence of War Minister ITAGAKI in recommending to
19 Foreign Minister UGAKI that SHIRATORI be appointed
20 Vice Foreign Minister.

21 This is offered to contradict the statement
22 of witness UGAKI on cross-examination at page 34,915
23 that no one other than Prince KONOYE had approached him
24 regarding the appointment of SHIRATORI, and further to
25 contradict witness UGAKI's specific denial at page

45,965

1 in the latter part.

2 THE PRESIDENT: We will adjourn until half
3 past nine tomorrow morning.

4 (Whereupon, at 1600, an adjournment
5 was taken until Wednesday, 31 March 1948, at
6 0930.)

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is made by Mr. Blewett.

Are all these exhibits for identification only, Mr. Blewett?

MR. BLEWETT: Those are that group of books that were put in by Mr. Roberts on Hako-Ichiu. They are all for identification.

THE PRESIDENT: No objection?

MR. HORWITZ: No objection.

THE PRESIDENT: Ordered as prayed.

Paper 1698, an application on behalf of the defense by Mr. Brooks --

MR. BLEWETT: I am representing Mr. Brooks, sir. He was unable to be here this morning.

THE PRESIDENT: --for the withdrawal of a number of documents for identification, being exhibit Nos. 2771-4 inclusive, 2777 and 2778, 2780 and 2781, and 2792.

No objection?

MR. HORWITZ: No objection.

THE PRESIDENT: Ordered as prayed.

(Whereupon, at 0904, the proceeding was concluded.)

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of 1933 and that he had no other idea than to settle
1 the Manchurian Incident. This is because he believed
2 that though he remembered the matters in 1933, he did
3 not talk to anyone about what he thought in 1932. It
4 is clear that he made such an answer as "he did not
5 remember it for certain" even though it might have
6 been advantageous for him.
7

This document endorses the fact related in
8 our defense document No. 2010 or exhibit No. 3166 that
9 ARAKI began to entertain his idea of proposing a Far
10 Eastern peace conference from that time. Therefore
11 if the witness had been asked clearly, his memory
12 would have been refreshed. Baron HARADA's Memoir shows
13 his poor reasoning when it says that it was studied
14 whether or not Soviet Russia should be attacked in such
15 a manner as if a Japan-Soviet war was going to break
16 out in two years. In reality there was no one who
17 had any idea actively to attack the Soviet Union in
18 two years as Japan was not in any situation so to
19 do which is clearly shown by evidence in the general
20 phase. This, we contend, is HARADA's misrepresenta-
21 tion of what ARAKI said which was to the effect that
22 the Soviet Union's attitude should be watched for two
23 years. That is proved from the fact that he planned
24 to hold an international conference, as is described
25